

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2263 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

PRATIKSHABEN B UTRANKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2263 of 1999
MR JA ADESHRA for Petitioner No. 1-2
MR ND GOHIL ASSTT GOVERNMENT PLEADER for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 28/08/2003

ORAL JUDGEMENT

#. Heard learned advocate Mr.J.A.Adeshra on behalf of the petitioners and learned AGP Mr.N.D.Gohil for respondent - State Authority.

#. The brief facts giving rise to the present petition are as under :

The petitioners were appointed in the post of Clerk in the year 1981 and they remained in service upto 1984 and thereafter, their services were terminated by the respondent. Therefore, the petitioners had challenged the termination order passed in the year 1984 before the labour court, Kalol being Reference No.269 / 1987, wherein the labour court has passed the award on 13th March, 1992 granting reinstatement to the petitioners to the original post without backwages of the interim period. Said award was challenged by the respondent being Special Civil Application No.7567 / 1992 before the Division Bench of this Court. The Division Bench of this Court has passed the order on 21st October, 1992 rejecting the petition filed by the respondent, meaning thereby, award passed by the labour court has been confirmed by the Division Bench of this Court. In pursuance thereof, ultimately, one office order No.156 / 1993 has been issued by the respondent by order dated 31st March, 1993 wherein reinstatement order to the respective post of the petitioners has been issued in the scale of Rs.950-1500, meaning thereby, that award passed by the Labour Court on 13th March, 1992 has been fully implemented by the respondent. Thereafter, one notice dated 20th November, 1993 received by the petitioners from the respondent wherein it is mentioned that their services will be terminated with effect from 20th December, 1993, meaning thereby, one month notice in advance was given to the petitioners by the respondent. Said notice was challenged by the petitioners before this Court being Special Civil Application No.3099 / 1994 wherein this Court has directed the petitioners to make a detailed representation on the basis of the statement made by the learned advocate of the petitioners and the learned AGP Mr.Solanki who appeared on behalf of the respondent who submitted that the respondent will consider in light of the resolution which applied to the category of the petitioners. In view of this, the petition was withdrawn by the petitioners with clarification that in case of decision if ultimately against the petitioners, that can be challenged by the petitioners and during this interim period, the petitioners will be allowed to work in their present position until such representation so decided. This was clear direction issued by this Court on 16th September, 1994. In pursuance of this, services of the petitioners were not terminated but they remained in service upto 11th August, 1995 and then one letter was received by the

petitioners from the respondent to terminate services of the petitioners with effect from 11th August, 1995. Against that, the petitioners had approached the Assistant Commissioner of Labour, Mehsana being NO.IDR / 540, 541, 578 / 674 dated 27th December, 1995. Thereon the Conciliation Officer - Assistant Commissioner of Labour, Mehsana by order dated 27th December, 1995 recommended to the respondent to reinstate the petitioners in service to the original post in which they were working. This recommendation and opinion of the Assistant Commissioner of Labour has been implemented by the respondent by office order No.336 / 95 dated 30th December, 1995 and in pursuance of that, the petitioners were reinstated on 2nd January, 1996 by the respondent and from that date onwards, the petitioners are in service and working with the respondent.

#. Against the present petition, affidavit-in-reply has been filed by the respondent and a copy of thereof served on the petitioner which is taken on record.

#. In light of this background and facts, the petitioners have two grievances. Firstly, the grievance is that though the petitioners remained in service continuously with effect from 1981, service benefits which are attached to the post of the Workcharge like HRA, CLA, Bonus and earned leave and other similar benefits have not been paid by the respondents and therefore, the prayer is made to direct the respondents to pay amounts in respect of these service benefits from 1981 till date. The second grievance is that though they remained in service from 1981, even till date, their services has not been considered to be continued and no such benefit of continuity of service, has been extended to the petitioner. Except that no other grievance has been raised by the petitioners nor by their learned advocate Mr.Adesara in the present petition.

#. In light of these two grievances, learned AGP Mr.N.D.Gohil for the respondent authority has submitted that detailed reply has been filed and so far these grievances are concerned, para-20 of the reply specifically deals with these grievance. The averments made in para-20 of the reply, as relied upon by the learned AGP Mr.Gohil are reproduced hereinbelow :

"[20] So far as para-3.26 of the Memo of the petition is concerned, I say and submit that as mentioned in for going paras the petitioners were appointed as Work Charge Karkoon on 1.4.1993 and the petitioner were re-appointed on regular Work

Charge establishment vide order No.EC/2868, dated 30.12.95, and after that all benefits like H.R.A. leave salary, bonus, medical allowance etc. have been given to them."

Therefore, learned AGP Mr.Gohil, relying on averments made in para-20 of the reply, submits that with effect from 30th December, 1995, all the benefits like H.R.A. leave salary, bonus, medical allowance etc. have been given to them, meaning thereby, now the only question remains about past service benefits from 1981 to 1995. For that, learned AGP Mr.Gohil has submitted that there is no specific prayer made by the petitioner claiming all past benefits but from the date on which they re-employed, benefit has been given by the respondent and for rest of the benefits, the petitioners are not entitled. Learned AGP Mr.Gohil further submitted that the petitioners are not entitled to benefits of continuity of service because on every occasion, independent appointment order has been issued and the same had no connection with the past services and all the earlier orders suggest periodical appointments of the petitioners and therefore, the petitioners are not entitled to benefit of continuity of service from the date of appointment.

#. Learned advocate Mr.Adesara has submitted that if the entire matter has been looked into minutely, the petitioners have remained in service all through out without any break with the respondents and on account of periodical appointment orders giving artificial break, the same cannot be considered to be break in service. Ultimately, the petitioners are entitled to continuity of service as they were working since 1981 and not to grant continuity of service, will adversely affect their right in the matter of fixation of salary and other service benefits and even at the time of retirement, there will be loss in pension and gratuity etc. Therefore, learned advocate Mr.Adesar has submitted that continuity of service, for that, the petitioners are entitled.

#. I have considered submissions made by the learned advocates for the respective parties. Considering the undisputed facts between the parties that from 1981 the petitioners were in service and their services were terminated in the year 1984 but that order of termination has been set aside by the labour court on 13th March, 1992 wherein reinstatement has been granted without backwages of the interim period. However, reinstatement means continuity of service unless there is negative direction issued by the labour court concerned that

interim period may not be treated as continues one. Therefore, once the labour court has granted reinstatement and not reemployment, in other words, continuity of service impliedly has been granted by the labour court. That said award has been confirmed by this Court by order dated 21st October, 1992 and then, the petitioners were reinstated as per the office order No.156 / 1993 dated 31st March, 1993. Thereafter, the petitioners have received notice dated 20th November, 1993 to terminate their services on 20th December, 1993 which was challenged in Special Civil Application No.3099 / 1994 by order dated 16th September, 1994. This Court has initially granted protection and that protection remained in existence till representation would be examined by the respondent and ultimately, services of the petitioner has been terminated with effect from 11th August, 1995 and in pursuance of the observations made by the Conciliation Officer on 27th December, 1995, the petitioners were reinstated in service by office order No.336 / 1995 dated 30th December, 1995 and actual reinstatement has been taken place on 2nd January, 1996. Therefore, considering the entire facts which are not disputed between the parties, in my opinion, merely having a gap from 11th August, 1995 to 30th December, 1995, the same cannot be considered to be break in service when long span of the earlier past services which has been treated and remained continuous and the petitioners were working during this entire period. Therefore, according to my opinion, the petitioners are entitled to benefits of continuity of service in light of above undisputed facts between the parties. It is also pertinent to note that for grant of continuity of service to the petitioners while keeping in mind that after passing of the award by the labour court on 13th March, 1992 and failing in challenge before this Court, reinstatement order has been issued by the respondent in regular scale on workcharge establishment of the petitioner, meaning thereby, the earlier services as Workcharge or whatever may be in the nature, has been counted by the respondent for all purposes. It is also clear that after passing of the award by the labour court which has been confirmed by this Court, it is not the case of the respondent that on any occasion, the workman were reinstated as Daily Wager but on the contrary, the petitioners have been reinstated on Workcharge Establishment in the regular scale salary and they are working since then.

#. The controversy involved in the present petition has been earlier dealt with by this Court in the order dated

7th March, 2002 passed in Special Civil Application No.13758 of 1993. The relevant observations made by this Court in aforesaid decision are referred as under :

"I have considered the submissions made by both I have considered the submissions made by both the learned advocates. There are ways of granting order of reinstatement by the labour court. If the order of reemployment would have been passed by the labour court, then, naturally, continuity of service would not have been there but once reinstatement has been granted, it would include continuity of service too, impliedly. This aspect has been considered by the apex court in case of Sanat Kumar Dwivedi versus Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit and Others reported in 2001 AIR SCW 2430. In para 3 of the said decision, the apex court has observed as under :

"3. It is clarified that this order will not be treated to be resulting in any break in service of the appellant. He will be deprived of only the back wages. The continuity of service and all other notional benefits on that basis will be available to him. It appears that when the order of reinstatement was granted, except depriving him of back wages, it necessarily meant that the continuity of service was implicit in the reinstatement. Even condition Nos. 1 and 2 of the order of reinstatement clearly indicate that he is reinstated in service with continuity as pay scales and other benefits were also directed to be given. "

It is further observations that;

"Recently, the apex court has considered the same question in case of Gurpreet Singh and State of Punjab and others reported in 2002 (92) FLR 838. The relevant observations made by the apex court in 1 and 2 of the said judgment are reproduced as under :

"Leave granted.

The Plaintiff is in appeal against the impugned judgment of the High Court of Punjab and impugned judgment of the High Court of Punjab and services stood terminated and he filed the suit

for declaring the order of termination null and void. The suit was dismissed. The lower appellate court, however, on reappreciation of the materials on record, came to the conclusion that the order passed by the D.I.G. must be held to be illegal and consequently directed that the plaintiff should be reinstated in service. Having directed so, the first appellate court categorically held that the plaintiff will not be entitled for any arrears of salary for the period for which he has not served. The plaintiff assailed the appellate decree by filing a second appeal claiming that he would be entitled to the arrears of salary. The High Court by the impugned order not only confirmed the decree of the lower appellate court that the plaintiff will not be entitled to any arrears of salary but also further added that the plaintiff will not get his continuity of service. The plaintiff therefore is in appeal before this Court.

2. Having heard the learned counsel for the parties and on examining the materials on record, we fail to understand how the continuity of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff will not get continuity of service cannot be sustained and we set aside that part of the impugned order. So far as the arrears of salary is concerned, we see no infirmity in the direction which was given by the lower appellate court taking into account the facts and circumstances including the fact that the suit was filed after a considerable length of time. That part of the decree denying the arrears of salary stands affirmed and this appeal stands allowed in part to the extent indicated above."

#. Thus, in the above decision, this Court has examined the question and observed that once reinstatement has been granted and accepted by the employer, meaning thereby, it impliedly includes continuity of service. In such circumstances, continuity of service cannot be denied to the workman. Unless there is negative direction issued by the labour court, otherwise, continuity of service must have to be impliedly covered in case when reinstatement has been granted by the labour

court. In the facts of this also, reinstatement has been granted by the labour court on 13th March, 1992 which remained intact and upheld by the Division Bench of this Court and therefore, the effect of that award still remained continued till even in between two termination orders upto reinstatement has been granted by the respondent. Therefore, according to my opinion, the workmen are entitled to all the benefits of continuity of service under the Service Rules which are available to the petitioners.

##. In view of above observations made by the respondent in para-20 of the reply to the effect that with effect from 30th December, 1995, service benefits like HRA, CLA, Bonus, Medical Allowance and others are being paid by the respondent to the petitioners. Therefore, there is no need for this Court to issue any further direction as to these services benefits but even otherwise, this Court inclines to keep such rights of the petitioners open and they can claim, if they are so advised under the law, to file appropriate proceedings against the respondent for claiming said service benefits with retrospective effect if the same were not paid from the date of appointment till 30th December, 1995 by resorting and filing appropriate proceedings available to the petitioner under the law.

##. In view of above discussion, present petition succeeds to this extent and the same is partly allowed accordingly with direction to the respondent to treat services of the petitioners continuous with effect from date of joining in service in the year 1981 and accordingly, it is further directed to the respondents to give them seniority on the basis of continuity of the service and shall also grant them whatever service benefits which are available under the service rules and Government Resolution available to the petitioners, within three months from the date of receiving the copy of this order.

Rule is made absolute to the extent indicated above with no order as to costs.

Date : 28.8.2003 [H.K.Rathod, J.]

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